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U.S. Department of Labor

8 UNITED STATES DISTRICT COURT  
9  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 DOSTART CLAPP GORDON &  
COVENEY, LLP, a limited liability  
12 partnership,

13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF  
LABOR,

16 Defendant.  
17 \_\_\_\_\_

Civil No. 08cv0863-JM (AJB)

DEFENDANT'S ANSWER TO  
FIRST AMENDED COMPLAINT

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19 COMES NOW the Defendant U.S. Department of Labor, by and through its counsel, Karen P.  
20 Hewitt, United States Attorney, and Megan Callan, Assistant United States Attorney, and in answer to  
21 the Plaintiff's First Amended Complaint ("FAC"), sets forth the following:

22 1. Answering Paragraph 1 of the FAC, Defendant states that the allegations contained therein  
23 are legal conclusions solely within the purview of the Court and for its determination, and no answer  
24 is therefore required. To the extent an answer is required, said allegations are denied.

25 2. Answering Paragraph 2 of the FAC, Defendant states that the allegations contained therein  
26 are legal conclusions solely within the purview of the Court and for its determination, and no answer  
27 is therefore required. To the extent an answer is required, said allegations are denied.

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1           3. Answering Paragraph 3 of the FAC, Defendant states that it lacks sufficient information to  
2 form a belief as to the truth of the allegations, and on that basis Defendant denies the allegations therein.

3           4. Answering Paragraph 4 of the FAC, with respect to the first sentence, Defendant admits the  
4 allegations therein. With respect to the second sentence, Defendant states that the allegations contained  
5 therein are legal conclusions solely within the purview of the Court and for its determination, and no  
6 answer is therefore required. To the extent an answer is required, said allegations are denied.

7           5. Answering Paragraph 5 of the FAC, Defendant admits the allegations contained therein.

8           6. Answering Paragraph 6 of the FAC, Defendant admits that Defendant received from Plaintiff  
9 a Freedom of Information Act ("FOIA") request, dated November 29, 2006. Answering further,  
10 Defendant states that a true and correct copy of the FOIA request is attached hereto as Exhibit A. In all  
11 other respects, Defendant denies the allegations therein.

12           7. Answering Paragraph 7 of the FAC, Defendant states that Plaintiff's FOIA request, attached  
13 to the FAC and this Answer as Exhibit A, speaks for itself. In all other respects, Defendant denies the  
14 allegations therein.

15           8. Answering Paragraph 8 of the FAC, with respect to the first sentence, Defendant states that  
16 the allegations contained therein are legal conclusions solely within the purview of the Court and for  
17 its determination, and no answer is therefore required. To the extent an answer is required, said  
18 allegations are denied. With respect to the second sentence, Defendant admits the allegations therein.

19           9. Answering Paragraph 9 of the FAC, Defendant states that the allegations contained therein  
20 are legal conclusions solely within the purview of the Court and for its determination, and no answer  
21 is therefore required. To the extent an answer is required, said allegations are denied. Answering  
22 further, Defendant admits that Defendant did not give Plaintiff written notice of a need for an extension  
23 and that more than 10 working days have elapsed since Defendant's response was originally due.

24           10. Answering Paragraph 10 of the FAC, Defendant states that the allegations contained therein  
25 are legal conclusions solely within the purview of the Court and for its determination, and no answer  
26 is therefore required. To the extent an answer is required, said allegations are denied.

27           11. Answering Paragraph 11 of the FAC, with respect to the introductory clause, Defendant  
28 states that it lacks sufficient information to form a belief as to the truth of the allegations, and on that

1 basis Defendant denies the allegations therein. With respect to subparagraphs (a)-(c), Defendant states  
2 that Mr. Sinkovic, in his capacity as FOIA Coordinator for DOL's Employment and Standards  
3 Administration, provides information to requesters regarding the receipt and status of their FOIA  
4 requests. In all other respects, Defendant states that it lacks sufficient information to form a belief as  
5 to the truth of the allegations, and on that basis Defendant denies the allegations therein.

6 With respect to subparagraph (d), Defendant admits the allegations therein with the exception  
7 of the content of Ms. Bingham's statement to Plaintiff. Answering further, Defendant denies that Ms.  
8 Bingham said that Plaintiff's FOIA request "was on the desk of the Clearance Department waiting for  
9 approval" and would be sent out promptly. Answering further, Defendant admits that Ms. Bingham  
10 indicated that the response to Plaintiff's FOIA request should be sent out soon. In all other respects,  
11 Defendant denies the allegations therein.

12 With respect to subparagraphs (e)-(f), Defendant admits the allegations therein.

13 12. Answering Paragraph 12 of the FAC, Defendant admits that it received Plaintiff's FOIA  
14 request on November 29, 2006, and that more than seventeen months have passed since that date. In  
15 all further respects, Defendant states that the allegations contained therein are legal conclusions solely  
16 within the purview of the Court and for its determination, and no answer is therefore required. To the  
17 extent an answer is required, said allegations are denied.

18 13. Answering Paragraph 13 of the FAC, Defendant states that the allegations contained therein  
19 are legal conclusions solely within the purview of the Court and for its determination, and no answer  
20 is therefore required. To the extent an answer is required, said allegations are denied.

21 14. Answering Paragraph 14 of the Complaint, Defendant states that the allegations contained  
22 therein are legal conclusions solely within the purview of the Court and for its determination, and no  
23 answer is therefore required. To the extent an answer is required, said allegations are denied.

24 The remaining allegations of the FAC contain Plaintiff's Prayer for Relief, to which no answer  
25 is required; however to the extent an answer is required, Defendant denies the allegations therein.

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1 ADDITIONAL AND AFFIRMATIVE DEFENSES

2 All allegations not here before specifically admitted, denied, or modified are hereby denied. For  
3 further and separate answer, Defendant United States Department of Labor alleges as follows:

- 4 1. The Court lacks jurisdiction over the subject matter of this action.  
5 2. Plaintiff's FAC fails to state a claim upon which relief may be granted.  
6 3. Defendant properly withheld documents of which Plaintiff's Complaint seeks production  
7 under FOIA, 5 U.S.C. §§ 552(b).  
8 4. Plaintiff is not entitle to attorney fees or costs incurred in this action.

9 Wherefore, Defendant prays that Plaintiff take nothing by its First Amended Complaint, that  
10 judgment be rendered in favor of Defendant, for costs of suit included herein, and for all other relief that  
11 the Court deems proper.

12 Dated: July 22, 2008

Respectfully submitted,  
KAREN P. HEWITT  
United States Attorney

14 s/ Megan Callan

15 \_\_\_\_\_  
MEGAN CALLAN  
Assistant U.S. Attorney

17 Attorneys for Defendant  
U.S. Department of Labor

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